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No 11

THE INITIATIVE AND REFER- ENDUM

State Legislation

MARGARET A. SCHAFFNER

MADISON, WISCONSIN
SEPTEMBER, 1907

INTRODUCTION

In the legislature of 1907 the following bills and resolutions relating to the initiative and referendum were introduced: Assembly bills 326, 357, 443; Senate bills 135, 177; Assembly joint resolutions 33, 37, 84; Senate joint resolution 17.

A handy compilation of laws and references relating to this subject will be of great use to future legislatures.

CHARLES MCCARTHY,
Chief Legislative Reference Department
Wisconsin Free Library Commission.

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Prepared with the co-operation of the Political Science De-
partment of the University of Wisconsin

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Discusses the effect of the referendum on social legislation.

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Discusses the question of introducing the referendum to settle disputes between the two houses of Parliament, p. 911, 922-3.

OBERHOLTZER, ELLIS P. The referendum in America.... New York, 1900.

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An excellent presentation of direct legislation.

SWITZERLAND—BUREAU OF FEDERAL STATISTICS. Les votations cantonales depuis 1890 (Die kantonalen Volksabstimmungen seit 1890). Berne, 1897.

A statistical summary of the votes on initiative and referendum measures in Switzerland from 1890 to 1897.

UNITED STATES, SENATE. Direct legislation; papers by Eltweed Pomery and others. 55th Cong. 2nd sess. Senate doc. no. 340. (In serial no. 3615.)

An extensive collection of arguments and digest of literature on the subject.

UNITED STATES, HOUSE OF REPRESENTATIVES. Referendum and initiative, by Arthur S. Hardy. 57th Cong. 2nd sess. House of Representatives, doc. no. 1, p. 482-94. (In serial number 4440.)

A detailed report on direct legislation in Switzerland, made to the department of state by the American minister to Switzerland in June, 1902.

VINCENT, JOHN M. Government in Switzerland. New York, 1900,

Discusses the operation of the initiative and referendum in Switzerland, also gives table of Cantons employing direct legislation, p. 72-4, 84-90. 188-199, and 362.

HISTORY

The "Initiative" and the "Referendum" are new terms for old institutions.

The initiative¹ may be defined as the power the people reserve to themselves to propose laws and to enact or reject the same independent of the legislature.

The referendum¹ may similarly be described as the power the people reserve to themselves to approve or reject any act passed by the legislative assembly.

The forms of the initiative and the referendum may be described as optional or obligatory in their operation upon the electorate, and as advisory or mandatory in their operation upon the legislature.

The referendum is obligatory when a law must be submitted to the people, and optional when a law is submitted only upon petition by a certain number of voters.

Under the mandatory initiative and referendum, the direct vote of the people is conclusive in the enactment of legislation. Under the advisory system, the voters can instruct their representatives by direct ballot. To make the system effective it is necessary to pledge representatives to obey the will of their constituents when expressed by referendum vote.

Public opinion laws merely secure the expression of public opinion on questions of public policy.

¹ Compare the definitions in the constitutions of Mont. Const. (Amend. 1906) art. 5, sec. 1; Okla. Const. 1907, art. 5, sec. 1; Ore. Const. (Amend. 1902) art. 4, sec. 1; S. D. Const. (Amend. 1898) art. 3, sec. 1; and in the proposed amendments for Me. Resolves. 1907, c. 121; Mo. Laws. 1907, p. 452; and N. D. Laws, 1907, p. 451.

Local legislation

The Swiss Landsgemeinde illustrates an early use of direct legislation in local affairs. The old New England town meeting, where measures were proposed and adopted or rejected at the option of the electors, affords another typical example.

Adoption of state constitutions

The state wide referendum for the adoption of state constitutions is a familiar institution in the United States.

The present constitution of Massachusetts, adopted in 1780, was the first in this country to be submitted to a direct referendum vote.

At the present time Delaware is the only state in the Union in which a referendum is not required for the adoption of constitutional amendments.

State legislation

The right to instruct representatives was commonly exercised before the adoption of written constitutions in this country.

The constitution of Massachusetts, adopted in 1780, expressly asserts the right of the people "to give instruction to their representatives." In 1783 the instructions from Boston ran: "It is our unalienable right to communicate to you our sentiments, and when we shall judge necessary or convenient, to give you our instructions on any special matter, and we expect you will hold yourselves at all times bound to attend to and to observe them."

After the adoption of written constitutions, judicial decisions generally concurred in the doctrine that the legislative assembly had no authority to redelegate the legislative power which was constitutionally vested in that body. Accordingly the legislature had no authority to refer the adoption or rejection of a general law to the people of the state.

For judicial decisions on this point, compare the following cases: *Thorne v. Cramer*, 1851, 15 Barb. (N. Y.), 112; *Barto v. Himrod*, 1853, 8 N. Y., 483; *People v. Collins*, 1854, 33 Mich., 343; *State v. Copeland*, 1854, 3 R. I., 33; *Santo v. State*, 1855, 2 Ia., 165; *State v. Hayes*, 1881, 61 N. H., 264.

For a contrary view, see *State v. Parker*, 1854, 26 Vt., 357.

Special constitutional provisions

The adoption of constitutional provisions which expressly require popular ratification or rejection of legislative acts on specified questions, is the next step in the history of direct legislation in the United States.

Provisions for the obligatory state wide referendum on special questions are found quite generally in our state constitutions. They cover a variety of questions including suffrage, state boundaries and annexations of territory, the location of the seat of government and of state institutions, apportionment, the incurring of state indebtedness, the loaning of the state credit, banks and banking, state aid to railways, taxation, appropriations, sale of school lands, and provisions for education.

For typical illustrations of the obligatory referendum compare the following constitutional provisions:

Suffrage. Col. Const. 1876, art. 7, sec. 2; N. D. Const. 1889, art. 5, sec. 122; S. D. Const. 1889, art. 7, sec. 2; Wis. Const. 1848, art. 3, sec. 1.

State boundaries and annexations of territory. W. Va. Const. 1872, art. 6, sec. 11.

Location of seat of government. Col. Const. 1876, art. 8, sec. 2; Kan. Const. 1859, art. 15, sec. 8; Mont. Const. 1889, art. 10, sec. 2; Ore. Const. 1857, art. 14, sec. 1; Pa. Const. 1873, art. 3, sec. 28; S. D. Const. 1889, art. 20; Wash. Const. 1889, art. 14, sec. 1.

Location of state institutions. Tex. Const. 1876, art. 7, secs. 10 and 14; Wyo. Const. 1889, art. 7, sec. 23.

Apportionment. W. Va. Const. 1872, art. 6, sec. 50.

Public credit. Cal. Const. 1879, art. 16; Col. Const. 1876, art. 11, sec. 5; Id. Const. 1889, art. 8, sec. 1; Ill. Const. 1870, art. 4, sec. 18; Ia. Const. 1857, art. 7, sec. 5;

Kan. Const. 1859, art. 11, sec. 6; Ky. Const. 1891, sec. 50; Mo. Const. 1875, art. 4, sec. 44; Mont. Const. 1889, art. 13, sec. 2; N. J. Const. 1844, art. 4, sec. 6; N. Y. Const. (Amend. 1905) art. 7, sec. 4; R. I. Const. 1844, art. 4, sec. 13; S. C. Const. 1895, art. 10, sec. 11; Wash. Const. 1889, art. 8, sec. 3; Wyo. Const. 1889, art. 16, sec. 2.

Banks and banking. Ill. Const. 1870, art. 11, sec. 5; Ia. Const. 1857, art. 8, sec. 5; Kan. Const. 1859, art. 13, sec. 8; Mo. Const. 1875, art. 12, sec. 26; and Wis. Const. 1848, art. 11, sec. 5. Wisconsin provides for a double referendum, first, to determine whether a law shall be submitted, and then, by a second referendum, whether the law submitted shall be adopted.

State aid to railways. Minn. Const. (Amend. 1860) art. 9, sec. 2.

Taxation. Col. Const. 1876, art. 10, sec. 11; Id. Const. 1889, art. 7, sec. 9; Ill. Const. 1870, art. 4, sec. 33; Mont. Const. 1889, art. 12, sec. 9; Utah, Const. 1895, art. 13, sec. 7.

Appropriations for public buildings. Col. Const. 1876, art. 11, secs. 3-5; Ill. Const. 1870, art. 4, sec. 33.

Sale of school lands. Kan. Const. 1859, art. 6, sec. 5.

Provisions for education. Tex. Const. 1876, art. 7, secs. 10 and 14.

Recent constitutional amendments

Within recent years a number of states have adopted constitutional provisions establishing the initiative and referendum for general state legislation. These amendments provide for the optional initiative and referendum, whereas the older constitutional provisions for the referendum on special state questions are obligatory.

For recent constitutional provisions for direct state legislation, see S. D. Const. (Amend. 1898) art. 3, sec. 1; Utah, Const. (Amend. 1900) art. 6, secs. 1 and 22; Ore. Const. (Amend. 1902) art. 4, sec. 1; Nev. Const. (Amend. 1904) art. 19, secs. 1 and 2, (provides referendum only); Mont. Const. (Amend. 1906) art. 5, sec. 1; Okla. Const., 1907, art. 5, secs. 1-4, 6-8, and art. 24, sec. 3.

For proposed constitutional amendments, see Me., Resolves, 1907, c. 121; Mo., Laws, 1907, p. 452-3; N. D., Laws, 1907, p. 451-3.

Advisory systems

The difficulty of securing constitutional amendments

for the initiative and referendum has led to the development of other methods for securing at least partial systems of direct state legislation.

Public opinion laws. A public opinion system was enacted in Illinois in 1901. The electors of that state have voted upon a number of legislative questions; but as the candidates for the legislature were not pledged to obey the wishes of their constituents, these expressions of opinion have not been very effective in securing the legislation desired.

See Ill. Laws, 1901, p. 198.

The advisory system within parties. The advisory system within the parties at primary elections was adopted in Texas in 1905.

See Tex. Laws, 1905, c. 11, sec. 140.

Validity of the initiative and the referendum

The validity of legislation for the initiative and referendum has been sustained in a number of recent court decisions.

In 1903 the supreme court of Oregon held that the initiative and referendum amendment to the constitution did not abolish nor destroy the republican form of government, nor substitute another in its place. The court declared: "The representative character of the government still remains. The people have simply reserved to themselves a larger share of legislative power." *Kadderly v. Portland*, 1903, 44 Ore., 118.

An interesting discussion as to what constitutes representative government is given by Madison in *The Federalist*, 302.

For additional judicial decisions on direct legislation, see *State ex rel. Lavin et al. v. Bacon et al.*, 1901, 14 S. D., 284; and *In re Pfahler*, 1906, 88 P., 270.

LAWS AND JUDICIAL DECISIONS²

Foreign countries

*Switzerland.*³ Fed. Const. 1874, art. 89. Federal laws, enactments, and resolutions are to be passed only by the agreement of the two councils. Federal laws must be submitted for acceptance or rejection by the people if the demand is made by 30,000 voters or by 8 Cantons. The same principle applies to federal resolutions which have a general application and which are not of an urgent nature.

art. 120. When either council of the Federal Assembly passes a resolution for the complete amendment of the federal constitution and the other council does not agree, or when 50,000 voters demand the complete amendment, the question whether the federal constitution ought to be amended is, in either case, to be submitted to a referendum vote, and if the majority of the citizens who vote pronounce in the affirmative, there must be a new election of both councils for the purpose of preparing the complete amendment.

² The present study concerns itself only with the initiative and the referendum for general state legislation. Constitutional provisions for the obligatory referendum on special state questions, and state legislation relating to the initiative and referendum in local affairs, are not considered.

³ See United States. 57th Cong. 2nd sess. House of Rep. doc. no. 1 (in serial no. 4440) p. 982-94, for an excellent account of the Swiss referendum and initiative, by Arthur S. Hardy, formerly U. S. minister to Switzerland.

Fed. Law, June 17, 1874. This law provides the procedure for referendums.

Fed. Const. (Amend. 1891) art. 121. Partial amendment may take place through the forms of popular initiative or of those required for passing federal laws. The initiative may be used when 50,000 voters present a petition for the enactment, the abolition, or the alteration of certain articles of the federal constitution. When several subjects are proposed for amendment or for enactment in the federal constitution by means of the initiative, each must form the subject of a special petition. Petitions may be presented in the form of general suggestions or of finished bills. When a petition is presented in the form of a general suggestion, and the Federal Assembly agrees thereto, it is the duty of that body to elaborate a partial amendment in the sense of the initiators, and to refer it to the people and the Cantons for acceptance or rejection. If the Federal Assembly does not agree to the petition, then the question of whether there shall be a partial amendment at all must be submitted to the vote of the people, and if the majority of voters express themselves in the affirmative, the amendment must be taken in hand by the Federal Assembly in the sense of the people.

When a petition is presented in the form of a finished bill, and the Federal Assembly agrees thereto, the bill must be referred to the people and the Cantons for acceptance or rejection. In case the Federal Assembly does not agree, that body can elaborate a bill of its own, or move to reject the petition and submit its own

bill or motion to the vote of the people and the Cantons along with the petition.

art. 123. The amended federal constitution, or the amended part thereof, is to be in force when it has been adopted by a majority of the citizens who take part in the vote thereon, and by a majority of the states. In making up a majority of the states the vote of a half Canton is counted as a half vote.

Fed. Law, June 27, 1892. This law provides the mode of procedure for the initiative.

The Cantons. All the Cantons possess the initiative either in constitutional or legislative matters, or both. All except Freiburg have some form of the referendum either obligatory or optional, or both.

Great Britain. The question of introducing the referendum to settle disputes between the two houses was recently discussed in the British Parliament.

See the Parliamentary Debates for June 24, 1907, p. 911, 922-3.

Commonwealth of Australia. Const. 1900. This constitution was ratified by referendum vote taken in the separate colonies in Australia from 1898 to 1900. Under chapter 8, section 128, of the constitution, proposed amendments must be submitted to a referendum vote. A double majority is required for ratification, namely, a majority of all the electors voting and also a majority vote in more than half of the states.

Norway. An interesting use of the referendum was made by the people of Norway in their separation from Sweden. A Resolve of the Storting on July 28, 1905, provided for a referendum vote of the electors over the

whole country to decide the question of the dissolution of the union. The referendum took place on August 13, 1905, and resulted in a practically unanimous vote for the dissolution.

United States

Illinois. Laws, 1901, p. 198. Under this law the submission of any question for an expression of public opinion may be secured on a written petition signed by 10% of the registered voters of the state. The petition must be filed with the proper election officers not less than sixty days before the election at which the question is to be considered. Not more than three propositions may be submitted at the same election and they are to be submitted in the order of filing.

Maine. (Proposed Const. Amend.) Resolves, 1907, c. 121. This amendment applies to statutory but not to constitutional law. Certain specific exemptions are also made for statutory law.

Emergency bills are not subject to the referendum. Such bills may include measures immediately necessary for the preservation of the public peace, health, or safety, but may not include (1) an infringement of the right of home rule for municipalities; (2) a franchise or license to a corporation or an individual, extending longer than one year; or (3) provision for the sale, or purchase, or renting for more than five years of real estate. The emergency and also the facts creating the same must be set forth in the preamble of the act. A two-thirds vote of all the members elected

to each house is necessary to pass an emergency measure.

Initiative bills may propose any measure, including bills to amend or repeal emergency legislation, but not to amend the state constitution. The petition must set forth the full text of the measure proposed and must be signed by not less than 12,000 electors. Proposed measures must be submitted to the legislature, and unless they are enacted without change, they must be submitted to the electors together with any amended form, substitute, or recommendation of the legislature, in such a manner that the people can choose between the competing measures, or reject both. When there are competing bills and neither receives a majority of the votes given for and against both, the one receiving the most votes is to be resubmitted by itself at the next general election, to be held not less than sixty days after the first vote thereon; but no measure is to be resubmitted unless it has received more than one-third of the votes given for and against both. An initiative measure enacted by the legislature without change is not to be referred unless a popular vote is demanded by a referendum petition. If the governor vetoes any measure initiated by the people and passed by the legislature without change and his veto is sustained by the legislature, the measure is to be referred to the people at the next general election.

The legislature may enact measures expressly conditioned upon the people's ratification by referendum vote.

Petitions for a reference of any act passed by the

legislature must be signed by not less than 10,000 electors, and must be filed within ninety days after the recess of the legislature. The governor is required to give notice of the suspension of acts through referendum petitions and make public proclamation of the time when the referred measure is to be voted upon. Referred measures do not take effect until thirty days after the governor has announced their ratification by a majority of the electors voting thereon.

Missouri. (Proposed Const. Amend.⁴) Laws, 1907, p. 452-3. The initiative and referendum apply to statutory law and to constitutional amendments. Initiative petitions require not more than 8% of the legal voters in each of at least two-thirds of the congressional districts in the state. Every petition must include the full text of the measure proposed, and must be filed not less than four months before the election at which it is to be voted upon.

The referendum may be ordered upon a petition signed by 5% of the legal voters in each of at least two-thirds of the congressional districts, or by the legislative assembly. Emergency measures are exempt from the referendum. Laws making appropriations for the state government, for the state institutions, and for the public schools are also exempt. Referendum petitions must be filed not more than ninety days after the final adjournment of the legislative session. A referred measure becomes a law when approved by a majority of the votes cast thereon.

⁴ This amendment will be submitted to the voters in Nov., 1908, for adoption or rejection.

Montana. Const. (Amend. 1906) art. 5, sec. 1. Direct legislation is established for statutory, but not for constitutional law. Certain specific exemptions are also made for statutory law. The referendum may not be invoked for emergency measures.

Initiative petitions require 8% of the legal voters from two-fifths of the whole number of counties of the state. They must include the full text of the measure proposed, and must be filed not less than four months before the election at which they are to be voted upon.

Referendum petitions require 5% of the voters from each of two-fifths of the counties and they must be filed not later than six months after the final adjournment of the legislative session.

Any measure referred to the people is to remain in full force and effect unless the referendum petition is signed by 15% of the legal voters of a majority of the whole number of the counties of the state, in which case, the law remains inoperative until it is passed upon at an election and the result has been determined as provided by law.

Laws, 1907, c. 62. This law establishes the procedure for carrying the direct legislation provisions of the constitution into effect. It definitely sets forth the requirements as to the form of petitions; the verification of signatures; the duties of officials in submitting petitions; the publication and distribution of the title and text of measures and of arguments; the manner of conducting the elections and of canvassing the vote; and

the proclamation of the governor declaring the enactment of the approved measures.

Provision is made for the official distribution of the text of measures to all the electors in the state. In addition, arguments for or against any proposed measures may be supplied at the expense of the parties interested; and such arguments when printed in pamphlet form of specified size and style, will be mailed by the state with the official copy of the measure to each voter.

Parties filing initiative petitions may supply arguments for and opposing parties may supply arguments against the measures proposed. In the case of referendums, any person may supply arguments for or against the referred measures; but the secretary of state is not obliged to receive any pamphlets for distribution unless a sufficient number is furnished to supply one to every legal voter in the state.

Nevada. Const. (Amend.,⁵ 1904) art. 19, secs. 1 and 2. A referendum may be ordered on petition of 10% of the voters. A referred measure becomes operative when approved by a majority vote.

North Dakota. (Proposed Const. Amend.⁶) Laws, 1907, p. 451-3. The initiative and referendum apply to statutory law and to constitutional amendments, but the same constitutional amendment may not be proposed oftener than once in ten years.

Initiative petitions require not more than 8% of the legal voters, they must include the full text of the

⁵ This amendment does not provide for the initiative, and the procedure provided for the referendum is indefinite.

⁶ This amendment must also be passed by the next legislature before being submitted to the people for adoption or rejection.

measure proposed, and must be filed not less than thirty days before any regular session of the legislature. The proposed measure must be transmitted to the legislature as soon as it convenes. Initiative measures take precedence over all other measures in the legislative assembly, except appropriation bills, and must be enacted or rejected without change or amendment within forty days. Any initiative measure enacted by the legislature is subject to referendum petition, or it may be referred by the legislature. If it is rejected, or no action is taken upon it by the legislature within the forty day limit, it must be submitted to the people for approval or rejection at the next regular election. The legislature may reject any measure proposed by initiative petition and propose a competing bill to accomplish the same purpose. This gives opportunity for publicity, for committee hearings, for the taking of testimony, for debate, and for deliberative consideration. When an initiative measure and a competing bill are both proposed, they must both be submitted to the people. In case conflicting measures submitted at the same election are both approved by a majority of the votes severally cast for and against the same, the one receiving the highest number of affirmative votes becomes valid and the other is thereby rejected.

The referendum does not apply to emergency measures. However, provision is made against an undue use of the emergency clause by the requirement that the facts creating the emergency be stated in one section of the bill, and if upon an aye and nay vote in

each house, two-thirds of all the members elected to each house vote on a separate roll call in favor of the law going into instant operation, it becomes operative upon approval of the governor.

Referendum petitions require not more than 5% of the legal voters and must be filed not more than ninety days after the final adjournment of the legislature. Any constitutional amendment or other measure referred to the people is to take effect when approved by a majority of the votes cast thereon, and is to be in force from the date of the official declaration of the vote.

This amendment is self executing, but legislation may be enacted to facilitate its operation.

Oklahoma. Const. 1907, art. 5, secs. 1-4, 6-8, and art. 24, sec. 3. The initiative and referendum apply to constitutional and to statutory law. Emergency measures are exempt from the referendum provisions.

Legislative measures may be proposed by 8%, and amendments to the constitution by 15% of the legal voters. Initiative petitions must contain the full text of the measure proposed. They must be filed with the secretary of state and be addressed to the governor who must submit them to the people.

A referendum may be ordered by 5% of the legal voters. Petitions for referred measures must be filed not more than ninety days after the final adjournment of the legislature.

Initiative measures require a majority of the votes cast at the election, while only a majority of the votes cast on a referred measure are necessary to give it ef-

fect. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislature.

The explicit statement is also inserted that "the reservation of the powers of the initiative and referendum shall not deprive the legislature of the right to repeal any law, or propose or pass any measure which may be consistent with the constitution of the state and the constitution of the United States."

In the light of the experience of older states that have adopted direct legislation in state affairs, this statement seems superfluous. The provisions of the state constitutions which reserve direct legislative power for the people do not contemplate the restriction of initiative power in the legislature; the power constitutionally delegated to representatives to initiate measures or to repeal laws still remains. The people merely reserve the right to propose measures and to enact or reject either initiative or legislative measures independent of the legislative assembly. For a discussion of this point, see *Kadderly v. Portland*, 1903, 44 Or. 118.

Oregon. Const. (Amend., 1902) art. 4, sec. 1. The initiative and referendum apply to constitutional and to statutory law, but the referendum may not be invoked for emergency measures.

Every initiative petition must contain the full text of the measure proposed, must be signed by at least 8% of the legal voters, and must be filed not less than four months before the election at which it is to be voted upon.

Referendum petitions must be signed by at least 5% of the voters, and must be filed not more than ninety days after the final adjournment of the legislative assembly.

Any measure referred to the people becomes a law

when it is approved by a majority of the votes cast thereon.

The initiative and referendum amendment does not abolish or destroy the republican form of government or substitute another in its place. The representative character of the government still remains....

Under this amendment, it is true, the people may exercise a legislative power and may in effect veto bills passed and approved by the legislature and the governor, but the legislative and executive departments are not destroyed.... Laws proposed and enacted by the people under the initiative laws of the amendment are subject to the same constitutional limitations as other statutes and may be amended or repealed by the legislature at will. *Kadlerly v. Portland*, 1903, 44 Or. 118.

Laws, 1907, c. 226. This act facilitates the operation of the initiative and referendum powers reserved by the people, regulates elections thereunder, and provides penalties for violations. The law definitely prescribes the form of initiative and referendum petitions; the manner of verifying signatures; the duties of officials in submitting measures; the method of canvassing and making returns; and the declaration of the enactment of approved measures.

The following definite provision is made for the publication and distribution of the text of proposed measures and for arguments advocating or opposing the questions submitted:—Before any election at which any proposed law or amendment to the constitution is to be submitted to the people, the secretary of state is required to have printed in pamphlet form the text of each measure to be submitted, together with the title as it will appear on the official ballot. Parties filing initiative petitions have the right to file any arguments advocating such measures. In the case of referen-

dums, any person has the right to file arguments for or against the referred measures. The parties offering arguments for distribution must pay all the expense for paper and printing to supply one copy with every copy of the measure to be printed by the state. The cost of printing, binding, and distributing the measures proposed, and of binding and distributing the arguments, are to be paid by the state as a part of the state printing. Within a specified time before any election at which measures are to be voted upon, the secretary of state is required to transmit copies of each measure together with the arguments submitted, to the voters within the state.

See *Stevens v. Benson*, 1907, 91 P. 577.

South Dakota. Const. (Amend., 1898) art. 3, sec. 1. Under this amendment the people expressly reserve the right to propose measures which the legislature is required to enact and to submit to a vote of the electors. They also reserve the right to require a referendum on any law which the legislature may have enacted, except laws necessary for the immediate preservation of the public peace, health, or safety, and laws for the support of the state government and its existing public institutions.

Not more than 5% of the qualified voters are required to invoke either the initiative or the referendum.

Pol. Code, 1903, secs. 21-7. Initiative petitions must contain the substance of the law desired. Referendum petitions must describe the law to be submitted by setting forth the title together with the date of passage and approval; such petitions must be filed within

ninety days after the adjournment of the legislature. Initiative or referendum measures approved by a majority of the votes cast thereon become law and are to be in force immediately after the result has been officially determined. (Laws, 1899, c. 93.)

The legislature having declared that the provisions of an act are necessary for the immediate preservation and support of the existing public institutions of the State, that declaration is conclusive upon this court. Such an act is clearly not within the referendum clause of sec. 1 as amended, of art. 3 of the constitution. *State ex rel. Lavin et al. v. Bacon et al.* 1901, 14 South Dakota, 394.

Texas. Laws, 1905, c. 11, sec. 140. Under the primary election law, 10% of the voters in any political party may propose policies and candidates and secure a direct party vote thereon. Petitions are to be filed with the chairman of the county or precinct executive committee at least five days before the tickets are to be printed and the chairman may require a sworn statement that the names of the applicants are genuine.

The number of signatures required for a petition is to be determined by the votes cast for the party nominee for governor at the preceding election. It is the duty of the chairman to submit any proposition for which a petition is filed, and the delegates selected at that time are to be considered instructed for whichever proposition a majority of the votes is cast. Provision is also made that all additional expense of printing any proposition on the official primary ballot is to be paid for by the parties requesting the same.

Utah. Const. (Amend. 1900) art. 6, secs 1 and 22. This amendment provides for direct legislation, but the amendment is not self executing and three successive legislatures have refused to put it in force.

SUMMARY

The leading provisions relating to direct state legislation may be summarized under the scope of direct legislation, limitations on the re-submission of measures, procedure for initiative petitions, procedure for reference of measures, enactment of referred measures, and penalties.

SCOPE OF DIRECT LEGISLATION

In the United States direct legislation has been applied to constitutional and to statutory law; it has also been employed to obtain expressions of public opinion on state affairs, and to secure instructions as to party policy within the political parties.

Constitutional law

The constitutional amendments for direct legislation in state affairs apply generally to constitutional law.

Exceptions. Some of the states exempt constitutional amendments from the operation of the initiative.

See Mont. Const. (Amend. 1906) art. 5, sec. 1; Me. (Proposed Const. Amend.) Resolves, 1907, c. 121.

Statutory law

As regards statutory law, most of the amendments provide for specific exceptions to the use of direct legislation and also provide for emergency measures.

Exceptions. The specific exceptions generally relate to appropriations for the current expenses of the state government, for the maintenance of the state institutions, and for the support of the public schools.

Compare the provisions of Me., Mo., Mont. and S. D.

Emergency measures. Laws necessary for the immediate preservation of the public peace, health, or safety, are generally exempt from the operation of the referendum.

See Me. (Proposed Const. Amend.) Resolves, 1907, c. 121; Mo. (Proposed Const. Amend.) Laws, 1907, p. 452-3; Mont. Const. (Amend. 1906) art. 5, sec. 1; N. D. (Proposed Const. Amend.) Laws, 1907, p. 451-3; Okla. Const. 1907, art. 5, sec. 2; Ore. Const. (Amend. 1902) art. 4, sec. 1; S. D. Const. (Amend. 1898) art. 3, sec. 1.

A safeguard against the undue use of emergency measures is provided in a number of cases by requiring the declaration of the emergency and a separate roll call and vote on the question of the emergency. A two-thirds majority, on an aye and nay vote, of all the members elected to each house is also sometimes required for the passage of emergency bills.

Compare the provisions of Me. and N. D.

A further safeguard against the abuse of the emergency clause by the legislature is secured by an enumeration of laws which may not be enacted as emergency measures.

Thus, the proposed amendment for Maine provides that an emergency bill shall not include (1) the infringement of the right of home rule for municipalities; (2) a franchise or a license to a corporation or an individual to extend longer than one year; or (3) provision for the sale or purchase or renting for more than five years of real estate.

The courts have uniformly held that the question as to whether a law is necessary for the immediate preservation of the public peace, health, or safety, is for the legislature and is not subject to judicial review.

See *State v. Bacon*, 1901, 14 S. D., 394; and *Kadderly v. Portland*, 1903, 44 Ore., 118.

Public opinion

Public opinion system. Under public opinion laws pressure may be brought to bear upon legislators in the enactment of law.

See Ill. Laws, 1901, p. 198.

Advisory system. The advisory system goes farther in the same direction and instructs representatives as to legislative action.

Party policy

Advisory system within the parties. The use of the advisory system within the parties at primary elections enables the voters in any political party to propose policies and candidates and secure a direct party vote thereon.

See Tex. Laws, 1905, c. 11, sec. 140.

LIMITATIONS ON THE RESUBMISSION OF MEASURES

The possible abuse of direct legislation through a frequent resubmission of defeated propositions, is provided against in a number of states.

N. D. (Proposed Const. Amend. 1907) provides that the same constitutional amendment shall not be proposed oftener than once in ten years.

In Okla. Const. 1907, art. 5, sec. 6, any measure rejected by the people cannot be again proposed by the initiative within three years by less than 25% of the legal voters.

PROCEDURE FOR INITIATIVE PETITIONS

The procedure for initiative measures varies in the several states. Differences exist in the requirements for publicity, the completion of the petition, the transmission of measures to the legislature, the provision for competing bills, and the reference of initiative and of conflicting measures.

Publicity

Publicity is secured through the publication of the text of initiative measures and the distribution of arguments for and against proposed bills.

Publication of text of measure. Most of the states require the publication of the full text of initiative and referendum measures.

Compare the provisions for Me., Mo., Mont., N. D., Okla., Ore., and S. D.

Distribution of arguments. Certain states also make provision for the distribution of arguments.

For elaborate provisions for the distribution of arguments for and against proposed measures, see Mont. Laws, 1907, c. 62, and Ore. Laws, 1907, c. 226.

Completion of petition

The percentage of voters required to sign petitions, the basis of the percentage, the verification of signatures, and the method of filing petitions, vary considerably with the different states.

Percentage of voters. The percentage ranges from 5% to 15%.

The percentages for the different states are as follows: 8 per cent for Mo., Mont., N. D., Okla., and Ore.; and 5 per cent for S. D. In Mo. the 8 per cent is required only from each of at least two-thirds of the congressional districts, while in Mont. at least two-fifths of the whole number of counties must each furnish 8 per cent toward

making up the required 8 per cent for the entire state. Okla. requires 15 per cent to propose constitutional amendments. Instead of requiring a certain percentage, Me. requires a fixed number of 12,000 signatures for initiative measures.

Basis of percentage. The percentage required is uniformly based upon the vote cast at the last preceding general election.

In S. D. and Mont. the per cent is based on the vote for governor; in Ore., Mo., and N. D., on the vote for justices of the supreme court; and in Okla. on the vote for the state office receiving the highest number of votes.

Verification of signatures. The methods for verifying signatures are definitely prescribed in the laws enacted to facilitate the operation of the several amendments.

See S. D. Laws, 1899, c. 93; Ore. Laws, 1907, c. 226; and Mont. Laws, 1907, c. 62.

Filing. Provision is generally made that initiative petitions be filed with the secretary of state. The time for filing varies according to whether the petition is to be presented to the legislature, or is to be voted upon by the people without legislative consideration.

Time. The time for filing is not less than four months before the election in Ore., Mont., and Mo.; not less than thirty days before any regular session in N. D.; and at least thirty days before the close of the session in Me.

Transmission of measures to legislature

The requirement that all proposed measures be transmitted to the legislature gives opportunity for public hearings, for testimony, for debate, and for deliberative consideration.

Compare the provisions of Me. (Proposed Const. Amend.) Laws, 1907, c. 121, and of N. D. (Proposed Const. Amend.) Laws, 1907, p. 451-3.

Precedence of initiative measures. Provision is sometimes made that initiative measures take precedence over all other measures in the legislature except appropriation bills.

See the proposed amendment for N. D.

Limitations on legislative action. The provision that the legislature must enact the measure submitted is a restriction found in only one of the states.

S. D. Const. (Amend. 1898) art. 3, sec. 1.

N. D. requires that the legislature enact or reject the proposed measure within forty days.

Provision for competing bills

An important feature in several states is the provision that the legislature may submit a competing bill if it disapproves of the initiative measure. This affords opportunity for deliberative consideration of conflicting measures, and to some extent protects the people against the bills of extremists.

Reference of initiative measures and of competing bills

Competing bills are to be submitted with initiative measures so that the electors may choose between them or reject both.

See Me. (Proposed Const. Amend.) Resolves, 1907. c. 121, and N. D. (Proposed Const. Amend.) Laws, 1907, p. 451-3.

PROCEDURE FOR REFERENCE OF MEASURES

Measures may be referred either by petition or by legislative action.

Reference by petition

The requirements for reference by petition vary both

as to the percentage of voters required and the manner of filing petitions.

Percentage of voters. The required percentage ranges from 5% to 10%.

The percentages are 5 per cent for Mo., Mont., N. D., Okla., Ore., and S. D., while Nev. requires 10 per cent. The requirements for two-thirds of the congressional districts in Mo., and for two-fifths of the counties in Mont. holds for referendum as well as for initiative petitions. Me. requires a fixed number of 10,000 signatures.

Mont. has a provision that any measure referred to the people is to remain in full force unless the petition is signed by 15 per cent of the legal voters of a majority of the whole number of counties in the state, in which case the law remains inoperative until it is passed upon at an election and the result is officially determined.

Basis of percentage. The basis of the required percentage is the same as for initiative petitions.

Filing. Petitions are to be filed with the secretary of state within a specified time.

Time. The time for filing is not less than ninety days after the legislative session in S. D., Ore., Okla., Mo., Me., and N. D.; and not later than six months after the session in Mont.

Reference by legislative action

The legislature may enact measures expressly conditioned upon the people's ratification by referendum vote.

Compare the constitutional provisions of Ore., Mont., and Okla., and the proposed amendments for Me., Mo., and N. D.

Vote required. Montana requires a majority vote of the members elect to refer an act of the legislative assembly.

Duty of officials

In submitting initiative and referendum petitions to a vote of the people, the secretary of state and all other officers are to be guided by the general laws un-

til legislation is especially provided.*

Compare the provisions for Me., Mo., Mont., N. D., and Ore.

ENACTMENT OF REFERRED MEASURES

Elections for submission of measures

Measures may be referred for enactment or rejection at general or at special elections.

General Elections. S. D. provides for submission of measures only at general elections.

Special elections. Provision is made for special elections to be ordered, by the legislature in Mo., Mont. and Ore.; by law in N. D.; and by the legislature or the governor in Okla. and Me. Under the Me. provision the governor must order a special election, if so requested in the petition.

Veto power

The veto power of the governor does not extend to measures referred to the people.

See S. D., Ore., Mont., Okla., Me., Mo., and N. D.

The proposed amendment for Me. requires that if any measure initiated by the people and passed by the legislature without change, is vetoed by the governor, and if his veto is sustained by the legislature, the measure must be referred to the people at the next general election.

When operative

The provisions for the several states generally require that any measure referred to a vote of the people is to become law and be in force from the date of the official declaration that it has been approved by a majority of the votes cast thereon.

In Okla. initiative measures must be approved by a majority of the votes cast at the election.

In Me. provision is made that initiative measures enacted by the legislature without change, are not to be referred unless a referendum vote is demanded. When initiative and competing bills are submitted at the same election, and neither receives a majority of the votes given for and against both, the one receiving the most

votes is to be resubmitted by itself; but no measure is to be resubmitted unless it received more than one-third of the votes.

Under the N. D. provision, if conflicting measures submitted at the same election are both approved by a majority severally cast for and against each, the one receiving the highest number of affirmative votes is enacted.

PENALTIES

The laws enacted to facilitate the operation of the direct legislation amendments provide penalties for the unlawful signing of petitions.

In S. D., Ore., and Mont., the unlawful signing of initiative or referendum petitions is punishable by fine, or by imprisonment, or both, in the discretion of the court. In S. D. (Laws, 1899, c. 93) the fine is not to exceed \$500.00 nor the imprisonment five years. In Ore. (Laws, 1907, c. 226) and in Mont. (Laws, 1907, c. 62) the fine is fixed at the same limit and the imprisonment is not to exceed two years.



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